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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,221	03/29/2004	Gary W. James	METZ 2 00009	3033
27885	7590	11/03/2005		
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			EXAMINER STERLING, AMY JO	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/812,221

Applicant(s)

JAMES ET AL.

Examiner

Amy J. Sterling

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,7-9,13 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,7-9,13 and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is a non-final Office Action for application number 10/812,221 Rod Hanger Adapter, filed on 3/29/04. Claims 1,3,7-9,13 and 15-17 are pending. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/29/05 has been entered.

### ***Claim Objections***

Claims objected to because of the following informalities:

It is not clear whether the limitation[s] "rod hanger adapter " is/are intended to be a positive limitation of the claim or merely an environment for use of the device. If the limitation[s] is/are intended to be a positive limitation of the claim then the claim should recite "a " before the term " ". If the limitation is intended to be an intended use of the holding bracket, then the imitations of the claims should be changed to incorporate functional language such as "adapted to be" or "for use with".

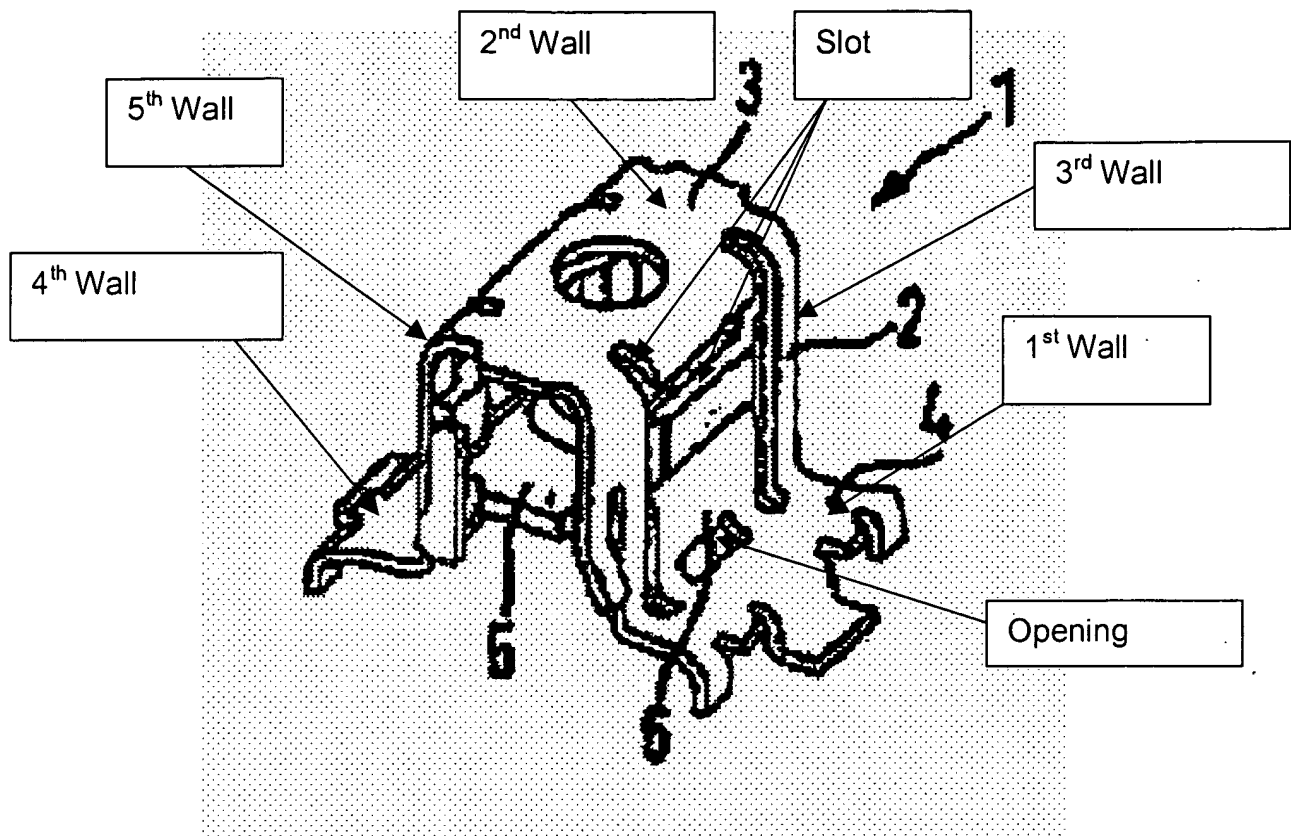
Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

Claims 1, 3, 7-9 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Publication No. 2005/0025603 to Hullman et al.

Hullman et al. teaches a device having a first wall (4) having an opening (See Drawing Below) being substantially square shaped and having an upper linear edge and being intersected by a longitudinal axis of the rod hanger adapter, a second wall (3) spaced from and at least substantially parallel and connected to the first wall, wherein the second wall includes first portion of a slot (See Drawing Below) being aligned with and intersected with the longitudinal axis of the rod hanger adapter, with a lower rounded edge, and a third wall (2) connecting the first wall (4) to the second wall (3), the third wall (2) which is substantially perpendicular to the first (4) and second walls (3) wherein a second portion of the slot is formed in the second wall extends into the third wall (2) and is aligned and intersected with by the longitudinal axis, and a fourth wall (See Drawing Below) having a notch (15) formed on a lower edge of the fourth wall, with an upper linear edge, the fourth wall which is spaced from and substantially parallel to the second wall and a fifth wall connecting the second and fourth walls. Hullman et al. also discloses wherein a longitudinal axis of the opening is aligned with a longitudinal axis of the slot, and the longitudinal axis of the notch is aligned with a longitudinal axis of the opening.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent Publication No. 2005/0025603 to Hullman et al. as applied to claim 1.

Hullman et al. teaches the basic inventive concept including that the device is made of one piece, but does not specifically teach that the device is made from metal.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any suitable material for making the device, metal having strength and durable properties.

### ***Response to Arguments***

The applicant has argued that the rejection under Hullman et al. does not disclose a rod hanger adapter, but instead discloses a fixing clamp. This is unpersuasive in that the recitation of the rod hanger adapter has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

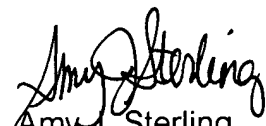
Also the applicant argues that the clamp may be too small for the application desired. This is unpersuasive in that the size of the reference is not limited in scope.

The applicant also argues that the notches are offset from the opening and is not aligned with the opening. This is unpersuasive in that portions of the opening and portions of the notch are aligned.

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***Conclusion***

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached at 571-272-6788. The fax machine number for the Technology center is 571-273-8300 (formal amendments) or 571-273-6823 (informal amendments). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

  
Amy J. Sterling  
10/20/05